

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES

In re the Temporary Immediate
Suspension of the License of Michelle
Snorek to Provide Family Child Care

**FINDINGS OF FACT, CONCLUSIONS
and RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge George A. Beck commencing at 9:30 a.m. on July 19, 2004 at the Office of Administrative Hearings, Minneapolis, Minnesota. The Office of Administrative Hearings record closed on July 19, 2005.

Rebecca S. Morrisette, Assistant County Attorney, 525 Portland Avenue South, 12th floor, Minneapolis, Minnesota 55415, appeared representing the Department of Human Services. Michelle Snorek, 10635 County Road 15, Plymouth, Minnesota 55441, appeared representing herself without the benefit of counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.^[1] Parties should contact the office of Kevin Goodno, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, 651-296-2701 to find out how to file exceptions. Since the Commissioner must issue his final order within 10 working days from receipt of the Administrative Law Judge's recommended decision,^[2] the parties are requested to file any exceptions as soon as possible.

STATEMENT OF THE ISSUE

Whether there is reasonable cause to believe that there is an imminent risk of harm for the health, safety, or rights of children in the care of Michelle Snorek so as to require the temporary immediate suspension of her family child care license.

Based upon the evidence and the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Michelle Snorek ("Licensee") is licensed as a family child care provider and provided care at her residence at 10635 County Road 15, in Plymouth, Minnesota.

2. On November 8, 2004, the Department of Human Services issued an order to Ms. Snorek fining her \$200 and placing her license on conditional status for one year. The violations alleged included overcapacity, inappropriate use of substitutes, supervision violations, outdoor play space, sanitation and cleanliness, and hazardous materials.^[3]

3. Ms. Snorek requested a hearing to contest the order which was held on April 20, 2005. The Administrative Law Judge found violations relating to overcapacity and the use of substitutes and recommended that the Order of Conditional License be affirmed. It was recommended that the fine be dismissed.^[4] The matter is presently under advisement by the Commissioner of Human Services.

4. Within a period of 5 days at the end of April, 2005, Hennepin County received 5 complaints about Ms. Snorek's child care, all of which related to incidents occurring on Friday, April 22, 2005.^[5]

5. One complaint was received from the parent of a 19 month old child who sustained a scratch on one cheek and a bruise on the other cheek but was not told by Ms. Snorek that an injury had occurred. When the parent asked Ms. Snorek the next day how the injuries had occurred, she was told that the child fell from a picnic table and no one had seen her fall.^[6] The Child Protection investigator concluded that the marks were compatible with the explanation.^[7]

6. Another complaint stated that Ms. Snorek had forced bread into the mouth of a child with developmental issues. The child's parent had advised Ms. Snorek that he would only eat bread if it is toasted. This behavior was witnessed by another daycare child and a former employee. Ms. Snorek admitted feeding the child bread.^[8]

7. Complaints were made in regard to three of the daycare children, that Ms. Snorek pushed on their head with both of her hands and that this caused pain to the child's head and neck.^[9] Several children also reported that Ms. Snorek was mean to them.

8. Ms. Snorek's child care assistant, who had been with her for seven years, quit on April 22, 2005, in response to the incidents.^[10]

9. Hennepin County Child Protection investigated and concluded that no maltreatment had occurred.^[11]

10. Hennepin County Child Care Licensing reviewed the investigation into the complaints and determined licensing that violations occurred in the use of physical punishment, physical and emotional abuse, failure to follow a parent's instructions, and supervision.^[12]

11. On April 29, 2005, Hennepin County Child Care Licensing recommended to the Department of Human Services that the family child care license of Michelle Snorek be placed on temporary immediate suspension based upon the complaints it

had received.^[13] On the same date the Department issued an Order of Temporary Immediate Suspension to Ms. Snorek.^[14]

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter under Minnesota law.^[15]

2. The Department of Human Services gave proper and timely notice of the hearing and has fulfilled all procedural requirements of law and rule.

3. Under Minnesota law, if a "license holder's action for failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program, the Commissioner shall act immediately to temporarily suspend the license."^[16]

4. At a hearing appealing an Order of Temporary Immediate Suspension, the burden of proof is on the Department to demonstrate that "reasonable cause exists to believe that the license holder's action or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of persons served by the program."^[17] The Department is authorized to demonstrate reasonable cause by submitting statements, reports or affidavits.^[18]

5. The Administrative Law Judge is directed by statute to determine "whether the immediate suspension should remain in effect pending the Commissioner's final order...regarding a final licensing sanction."^[19]

6. The Department has demonstrated reasonable cause to believe that violations of the child care licensing rules relating to supervision, physical punishment, physical or emotional abuse and failure to follow a parent's instructions have occurred.

7. The Department has demonstrated reasonable cause to believe that there is a risk of imminent harm to the health or safety of children served by the licensee.

8. The Memorandum that follows explains the reasons for these Conclusions.

Based upon these Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Order of Temporary Immediate Suspension suspending the family child care license of Michelle Snorek be AFFIRMED.

Dated this 21st day of July, 2005.

s/George a. Beck
GEORGE A. BECK
Administrative Law Judge

Reported: Taped Recorded
(One Tape)No Transcript Prepared

MEMORANDUM

In a proceeding to temporarily immediately suspend a child care license, the Department only has to show that *reasonable cause* exists to believe the Licensee failed to comply with the law. The legislature presumably established a low threshold for this determination to assure that children will be safe until there can be a full hearing on whether or not the child care license should be permanently revoked or otherwise subject to discipline.

A finding of “reasonable cause to believe” in a child care license proceeding has been compared to a finding of “probable cause” in a criminal proceeding.^[20] Probable cause has commonly been defined to mean “a reasonable ground in fact and circumstance for belief in the existence of certain circumstances.”^[21] In both cases the state is entitled to rely on hearsay evidence. Unless the Licensee presents evidence that makes the alleged violation “inherently incredible,” or “seemingly impossible under the circumstances,” evidence offered by the Licensee will not overcome a probable cause determination.^[22] The statute specifically allows the Department to demonstrate reasonable cause by submitting “statements, reports, or affidavits.”

The written exhibits and testimony offered by the Department at the hearing in this matter are sufficient to show a reasonable ground in fact for a belief that the violations alleged occurred. Although Ms. Snorek denied some of the allegations to investigators, she declined to testify at the hearing. She has not established that the allegations are inherently incredible or seemingly impossible. The conduct complained of is sufficiently serious to merit the conclusion that there is reasonable cause to believe that there is an imminent risk of harm to the safety of children served by the program. It is therefore appropriate that the license be suspended pending further disciplinary proceedings.

G.A.B.

^[1] Minn. Stat. § 14.61.

^[2] Minn. Stat. § 245A.07, subd. 2a(b).

^[3] Exhibit 7.

^[4] Exhibit 20.

^[5] Exhibit 10.

^[6] Exhibit 13.

^[7] Exhibit 12, page 4.

^[8] Exhibit 14, Exhibit 15, Exhibit 17, Exhibit 18, page 3.

^[9] Exhibit 16.

^[10] Exhibit 12, p. 2.

^[11] Exhibit 12.

^[12] Exhibit 10.

- [\[13\]](#) Exhibit 1.
- [\[14\]](#) Exhibit 9.
- [\[15\]](#) Minn. Stat. §§ 245A.01-245A.16 and 14.50.
- [\[16\]](#) Minn. Stat. § 245A.07, subd. 2.
- [\[17\]](#) Minn. Stat. § 245A.07, subd. 2a(a).
- [\[18\]](#) Minn. Stat. § 245A.08, subd. 3.
- [\[19\]](#) Minn. Stat. § 245A.08, subd. 3.
- [\[20\]](#) State v. Florence, 239 N.W.2d 892, 902 (Minn. 1976).
- [\[21\]](#) Merriam Webster Dictionary of Law (1996).
- [\[22\]](#) State v. Florence, 239 N.W.2d at 903.